

DEC 23 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)

1998 Annual Access Tariff)
Filings)

97-249
97-250 ✓
) Ameritech Operating Companies
) Transmittal No. 1136

) BellSouth Telecommunications, Inc.
) Transmittal No. 434

PETITION TO REJECT OR SUSPEND AND INVESTIGATE

Teleport Communications Group Inc. ("TCG"), pursuant to Section 1.773 of the Commission's Rules, hereby petitions the Commission to reject, or suspend and investigate the above-captioned 1998 Annual Access Tariff Filing of the Ameritech Operating Companies ("Ameritech").

I. INTRODUCTION

The Commission instituted a number of pro-competitive changes in its Access Charge Reform Order proceeding. One of its most competitive reforms, the "TIC exemption" permitted carriers that provide transport services to recoup the costs of providing that service.¹ Thus, the Access Charge Reform Order exempted carriers from paying to the incumbent LECs the Transport

1. Access Charge Reform, First Report and Order, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997) at ¶ 240 ("Access Charge Reform Order"), recon. First Order on Reconsideration, FCC 97-247 (rel. July 10, 1997), recon. Second Order on Reconsideration and Memorandum Opinion and Order, FCC 97-368 (rel. October 9, 1997) at ¶ 73 ("Second Reconsideration Order").

Interconnection Charge ("TIC") when the competitive carrier provided the transport.²

In its Annual Access Tariff Filing, however, Ameritech seeks to deny competitive carriers even the remaining portion of the TIC exemption to which they are entitled under the Commission's Second Reconsideration Order. Denying the providers of transport services the right to recover the costs of providing the service is contrary to the Commission Access Reform orders and is clearly anticompetitive. Therefore, the Commission must reject, or suspend and investigate Ameritech's 1998 Annual Access Tariff Filing. In addition, the Commission should require BellSouth to clarify that its implementation of the TIC exemption comports with Commission orders.

II. THE ANNUAL ACCESS TARIFFS MUST COMPLY WITH THE COMMISSION'S ACCESS REFORM ORDER AND PERMIT CARRIERS TO EXERCISE THE TIC EXEMPTION

In the Access Charge Reform Order, the Commission exempted competitive carriers from the payment of any TIC assessed on transport services provided by a competitive carrier, rather than the incumbent LEC. The Commission limited the TIC exemption in its Second Order on Reconsideration, such that the portion of the per-minute TIC that will not be reassigned to particular facilities on a cost-causative basis may still be imposed regardless of the carrier that provides

2. However, in its Second Reconsideration Order, the Commission substantially reduced the TIC exemption, thereby lessening one of the original order's key competitive reforms. See Second Reconsideration Order at ¶¶ 61-81.

transport.³ However, the TIC exemption still applies for those remaining per-minute TIC amounts that are expected to be reallocated to facilities-based rate elements. To the extent set forth in the Second Reconsideration Order, the TIC exemption ensures that any per-minute residual TIC will be charged only on minutes that utilize incumbent LEC transport facilities.⁴ The Commission's approach, based on the premise that in a competitive environment customers should only pay for the services they use, now must be enforced.

In its Annual Access Tariff filing, Ameritech attempts to circumvent the access charge reforms ordered by the Commission by refusing to honor the TIC exemption if the competitive carrier does not provide multiplexing. According to the Ameritech tariff,

If the CAP provides only the Entrance Facility, and the Telephone Company provider [sic] multiplexing and/or interoffice transport, the [CAP Transport Residual Credit] does not apply[.]⁵

This outcome is flatly contrary to the requirements of the Commission's Access Charge orders. In no part of the Access Charge Reform Order did the Commission define multiplexing as part and parcel of transport. Transport and multiplexing are

3. Second Reconsideration Order at ¶ 73. TCG believes that the Commission's Access Charge Reform Order correctly exempted competitors from all TIC charges. The Commission's decision to limit the applicability of the exemption in the Second Reconsideration Order is incompatible with the basis for the original finding. See TCG Petition for Reconsideration, CC Docket No. 96-262 (filed November 10, 1997).

4. Second Reconsideration Order at ¶ 73; see also Access Charge Reform Order at ¶ 240.

5. Ameritech Operating Companies, Tariff F.C.C. No. 2, Original Page 180.8.2 at 6.8.2(D)(7)(b).

two segregable services, as is reflected by the Commission's requirement that a distinct multiplexing rate element be developed.⁶ Under Ameritech's tariff, however, if a competitive carrier such as TCG utilizes Ameritech's multiplexing facilities, then that carrier must pay the entire TIC to the incumbent LEC, even when that carrier provides the entire transport service for its customer. Thus, neither the competitive carrier nor its customer may receive the benefit of the TIC exemption under Ameritech's tariff.

To the extent that the TIC exemption has been retained, the Commission did not condition the exemption on a competitive carrier's provisioning both transport and multiplexing. Instead, the Commission found that "[p]er-minute TIC amounts that the LEC expects to reallocate to facilities-based rate elements, in contrast, may be assessed only on minutes transported on the incumbent LEC's own transport facilities."⁷ In this regard, the Commission has distinguished multiplexing from transport by requiring a separate rate element for this service. Indeed, multiplexing is a central office service; thus, a competitive carrier can provide transport to and from the central office regardless of whether it uses its own multiplexing or purchases multiplexing services from the incumbent LEC.

The Ameritech tariff provision makes clear that the TIC exemption is lost if a competitive carrier purchases multiplexing from Ameritech, even though the competitive carrier carries the traffic over its own facilities to the Ameritech central

6. Access Charge Reform Order at ¶¶ 170-73, 219.

7. Second Reconsideration Order at ¶ 73 (emphasis added).

office. Thus, this tariff provision clearly violates the Commission's Access Charge orders and must be rejected, or suspended and investigated.

The BellSouth tariff provision regarding the TIC exemption is vague. Pursuant to Section 61.2 of the Commission's rules, this provision must be revised so that it clearly and explicitly sets forth how the BellSouth tariff treats the TIC exemption. According to BellSouth,

The Interconnection charge shall be assessed upon all customers interconnecting with the Telephone Company Switched Access Network. Interconnection is applicable to all switched access originating and terminating minutes of use. Separate originating and terminating Interconnection charges are applicable to those customers utilizing Telephone Company transport facilities and those customers not using Telephone Company transport facilities to gain access to the Telephone Company switched network.⁸

Although BellSouth anticipates charging the TIC, the quoted language does not indicate how the TIC exemption will be effectuated. It is possible that like the Ameritech tariff provision, this language would permit BellSouth to impose conditions upon the TIC exemption inconsistent with the Commission's policy. Thus, the Commission should require BellSouth to clarify this issue.

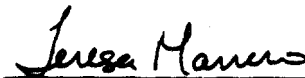
8. BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, 3rd Revised Page 6-11.4 at 6.1.3(5).

III. CONCLUSION

Based on the foregoing, the Commission should reject, or in the alternative, suspend and investigate, the Ameritech tariff with respect to its implementation of the TIC exemption. This tariff violates the Commission's policies and is anticompetitive. In addition, the Commission should require BellSouth to clarify its treatment of the TIC exemption.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Petition was sent by facsimile and federal express, or hand-delivery, as indicated, this 23rd day of December, 1997, to the following:

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